

AMENDED IN SENATE AUGUST 18, 2003

AMENDED IN SENATE JULY 15, 2003

AMENDED IN SENATE JUNE 26, 2003

AMENDED IN ASSEMBLY JUNE 2, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 898

Introduced by Assembly Member Chu

~~(Coauthors: Assembly Members Berg, Corbett, Diaz, Frommer, Goldberg, Hancock, Houston, Jackson, Kehoe, Lieber, Longville, Maze, Nation, Oropeza, Pavely, Wiggins, and Wolk)~~

~~(Coauthors: Senators Bowen and Kuehl)~~

(Coauthors: Assembly Members Bates, Berg, Chan, Cohn, Corbett, Daucher, Diaz, Frommer, Goldberg, Hancock, Shirley Horton, Houston, Jackson, Kehoe, Lieber, Liu, Longville, Matthews, Maze, Montanez, Nation, Oropeza, Pavely, Runner, Wiggins, and Wolk)

(Coauthors: Senators Alpert, Bowen, Escutia, Figueroa, Karnette, Kuehl, Romero, and Speier)

February 20, 2003

An act to add Section 680 to the Penal Code, relating to DNA evidence.

LEGISLATIVE COUNSEL'S DIGEST

AB 898, as amended, Chu. DNA evidence: Sexual Assault Victims' DNA Bill of Rights.

Existing law specifies various rights for crime victims.

This bill would establish the “Sexual Assault Victims’ DNA Bill of Rights.” This bill would ~~require~~ *authorize* a law enforcement agency investigating certain felony sex offenses to, upon the request of the victim, *and subject to the commitment of resources*, inform the victim whether or not a DNA profile was obtained from the testing of the rape kit evidence or other crime scene evidence from their case, whether that information had been entered into the Department of Justice Data Bank of case evidence, and whether or not there is a match between the DNA profile developed from the rape kit evidence or other crime scene evidence and a DNA profile contained in the Department of Justice Convicted Offender DNA Data Base, as specified. The bill would also provide that the victim would be given written notification by the law enforcement agency if the law enforcement agency elects not to perform DNA testing of the rape kit evidence or other crime scene evidence, or intends to destroy or dispose of the rape kit evidence or other crime scene evidence prior to the expiration of the statute of limitations as specified. The bill would further provide that the victim’s sole remedy for the failure of a law enforcement agency to comply with these provisions would be to file a writ of mandamus.

By imposing additional duties on local law enforcement entities, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 680 is added to the Penal Code, to read:
- 2 680. (a) This section shall be known as and may be cited as
- 3 the “Sexual Assault Victims’ DNA Bill of Rights.”



(b) The Legislature finds and declares all of the following:

(1) Deoxyribonucleic acid (DNA) and forensic identification analysis is a powerful law enforcement tool for identifying and prosecuting sexual assault offenders.

(2) Victims of sexual assaults have a strong interest in the investigation and prosecution of their cases.

(3) Law enforcement agencies have an obligation to victims of sexual assaults in the proper handling, retention and timely DNA testing of rape kit evidence or other crime scene evidence and to be responsive to victims concerning the developments of forensic testing and the investigation of their cases.

(4) The growth of the Department of Justice's Cal-DNA databank and the national databank through the Combined DNA Index System (CODIS) makes it possible for many sexual assault perpetrators to be identified after their first offense, provided that rape kit evidence is analyzed in a timely manner.

(5) Timely DNA analysis of rape kit evidence is a core public safety issue affecting men, women, and children in the State of California. It is the intent of the Legislature, in order to further public safety, to encourage DNA analysis of rape kit evidence within the time limits imposed by subparagraphs (A) and (B) of paragraph (1) of subdivision (i) of Section 803.

(6) A law enforcement agency assigned to investigate a sexual assault offense specified in Section 261, 261.5, 262, 286, 288a, or 289 should perform DNA testing of rape kit evidence or other crime scene evidence in a timely manner in order to assure the longest possible statute of limitations, pursuant to subparagraphs (A) and (B) of paragraph (1) of subdivision (i) of Section 803.

(7) *For the purpose of this section, "law enforcement" means the law enforcement agency with the primary responsibility for investigating an alleged sexual assault.*

(c) (1) Upon the request of a sexual assault victim the law enforcement agency investigating a violation of Section 261, 261.5, 262, 286, 288a, or 289 may inform the victim of the status of the DNA testing of the rape kit evidence or other crime scene evidence from the victim's case. The law enforcement agency may, at its discretion, require that the victim's request be in writing. The law enforcement agency may respond to the victim's request with either an oral or written communication, or by electronic mail, if an electronic mail address is available. Nothing

1 in this subdivision requires that the law enforcement agency
2 communicate with the victim or the victim's designee regarding
3 the status of DNA testing absent a specific request from the victim
4 or the victim's designee.

5 (2) Subject to the commitment of ~~local~~ *sufficient* resources to
6 respond to requests for information, sexual assault victims have
7 the following rights:

8 (A) The right to be informed whether or not a DNA profile of
9 the assailant was obtained from the testing of the rape kit evidence
10 or other crime scene evidence from their case.

11 (B) The right to be informed whether or not the DNA profile
12 of the assailant developed from the rape kit evidence or other crime
13 scene evidence has been entered into the Department of Justice
14 Data Bank of case evidence.

15 (C) The right to be informed whether or not there is a match
16 between the DNA profile of the assailant developed from the rape
17 kit evidence or other crime scene evidence and a DNA profile
18 contained in the Department of Justice Convicted Offender DNA
19 Data Base, provided that disclosure would not impede or
20 compromise an ongoing investigation.

21 (d) If the ~~investigating~~ law enforcement agency elects not to
22 analyze DNA evidence within the time limits established by
23 subparagraphs (A) and (B) of paragraph (1) of subdivision (i) of
24 Section 803, a victim of a sexual assault offense specified in
25 Section 261, 261.5, 262, 286, 288a, or 289, where the identity of
26 the perpetrator is in issue, shall be informed, either orally or in
27 writing, of that fact by the law enforcement agency.

28 (e) If the ~~investigating~~ law enforcement agency intends to
29 destroy or dispose of rape kit evidence or other crime scene
30 evidence from an unsolved sexual assault case prior to the
31 expiration of the statute of limitations as set forth in Section 803,
32 a victim of a violation of Section 261, 261.5, 262, 286, 288a, or
33 289 shall be given written notification by the law enforcement
34 agency of that intention.

35 (f) Written notification under subdivision (d) or (e) shall be
36 made at least 60 days prior to the destruction or disposal of the rape
37 kit evidence or other crime scene evidence from an unsolved
38 sexual assault case where the election not to analyze the DNA or
39 the destruction or disposal occurs prior to the expiration of the
40 statute of limitations specified in subdivision (i) of Section 803.

1 (g) A sexual assault victim may designate a sexual assault
2 victim advocate, or other support person of the victim's choosing,
3 to act as a recipient of the above information required to be
4 provided by this section.

5 (h) The law enforcement agency responsible for providing
6 information under this section shall do so in a timely manner and
7 shall, upon request of the victim or the victim's designee, advise
8 the victim or the victim's designee of any significant changes in the
9 information. In order to be entitled to receive notice under this
10 section, the victim or the victim's designee shall keep appropriate
11 authorities informed of the name, address, telephone number, and
12 electronic mail address of the person to whom the information
13 should be provided, and any changes of the name, address,
14 telephone number, and electronic mail address, if an electronic
15 mailing address is available.

16 (i) A defendant or person accused or convicted of a crime
17 against the victim shall have no standing to object to any failure
18 to comply with this section. The failure to provide a right or notice
19 to a sexual assault victim under this section may not be used by a
20 defendant to seek to have the conviction or sentence set aside.

21 (j) The sole civil or criminal remedy available to a sexual
22 assault victim for a law enforcement agency's failure to fulfill its
23 responsibilities under ~~subdivision (d) or (e)~~ *this section* is standing
24 to file a writ of mandamus to require compliance *with subdivision*
25 *(d) or (e)*.

26 SEC. 2. Notwithstanding Section 17610 of the Government
27 Code, if the Commission on State Mandates determines that this
28 act contains costs mandated by the state, reimbursement to local
29 agencies and school districts for those costs shall be made pursuant
30 to Part 7 (commencing with Section 17500) of Division 4 of Title
31 2 of the Government Code. If the statewide cost of the claim for
32 reimbursement does not exceed one million dollars (\$1,000,000),
33 reimbursement shall be made from the State Mandates Claims
34 Fund.

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